(18,869.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 641.

SOLOMON L. SWARTS, TRUSTEE IN BANKRUPTCY OF SIEGEL-HILLMAN DRY GOODS COMPANY, APPELLANT,

vs.

L. F. HAMMER, JR., COLLECTOR OF THE REVENUES OF THE CITY OF ST. LOUIS, MISSOURI.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 27, 1903.

a Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the December term, 1902, of said court, begun and held at the United States court-house in the city of St. Louis, Missouri, on the first Monday in December, to wit: the first day of December, A. D. 1902, before the Honorable Henry C. Caldwell, Honorable Walter H. Sanborn and Honorable Amos M. Thayer, circuit judges.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit: on the twelfth day of August, A. D. 1902, a transcript of record, pursuant to an appeal allowed by the district court of the United States for the eastern district of Missouri, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, in a certain cause wherein Solomon L. Swarts, trustee in bankruptcy of Siegel-Hillman Dry Goods Company, was appellant, and L. F. Hammer, Jr., collector, &c., was appellee, which said transcript of record is in the words and figures following, to wit:

1 The United States of America to L. F. Hammer, Jr., collector, &c., Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the district court of the United States for the eastern division of the eastern judicial district of Missouri, wherein Solomon L. Swarts, trustee in bankruptcy of Seigel-Hillman Dry Goods Company, is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Elmer B. Adams, judge of the district court of the United States for the eastern district of Missouri, this 27th day of June, in the year of our Lord one thousand eight hundred and ninety-two.

ELMER B. ADAMS,
Judge of the District Court of the United States for the Eastern District of Missouri.

Service of citation waived and appearance entered.

JOHNSON, HOUTS, MARLATT & HAWES,
Att'ys for Hammer.

No. 198. United States district court, eastern district of Missouri. L. F. Hammer, Jr., collector, *vs.* Solomon L. Swarts, trustee in bankruptcy, &c. Citation on appeal. Filed 27th June, 1902. Wm. Morgan, clerk.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

In the District Court of the United States in and for the Eastern Division of said Judicial District.

In the Matter of SIEGEL-HILLMAN DRY GOODS COMPANY, Bankrupt. In Bankruptcy. At St. Louis, in said District.

Be it remembered, that on the 19th day of June, A. D. 1902, there was filed in the office of the clerk of said court a certificate of question of Walter D. Coles, Esquire, referee in bankruptcy, arising upon the petition of L. F. Hammer, Jr., collector of the city of St. Louis, certified to the judge of this court for his opinion thereon, which certificate is in the words and figures following, to wit:

2

" In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In the Matter of SIEGEL-HILLMAN DRY GOODS COMPANY, Bankrupt. In Bankruptcy. No. 198.

I, Walter D. Coles, one of the referees of said court in bankruptcy, do hereby certify that in the course of the proceedings in said cause before me, the following question arose, pertinent to the said proceedings:

The Siegel-Hillman Dry Goods Company was adjudged bankrupt on February 8, 1900; and, thereafter, on March 8, 1900, Solomon L. Swarts was elected and qualified as trustee of the bankrupt estate. On the 1st of June, 1900, said Swarts, as such trustee, had in his hands, and on deposit in the designated depositary, the sum of $68320.00 in money, belonging to the bankrupt estate. On February 24, 1902, L. F. Hammer, Jr., collector of the revenue for the city of St. Louis, filed before the referee, a petition alleging that State, school and city taxes for the year 1901, had been regularly assessed against the property in the possession of said trustee on the 1st day of June, 1900, said property being said sum of $68320.00 in money before mentioned, and that a tax bill for said taxes, properly certified, had been delivered to said collector for collection, and prayed that the referee make an order, directing the trustee to pay him the sum of $1298.08, the amount of said tax bill, together with the accrued penalties, commissions and fees, as provided by law. The trustee, thereafter, on February 24, 1902, filed an answer to the petition of the collector, denying that the taxes, sought to be collected

by the petitioner, were a legal and proper charge against the trustee or that the same ought to be paid by said trustee out of the funds of the estate in his hands. The matter came on to be heard before the referee, pursuant to notice to the parties, on March 4, 1902, and, thereafter, on June 16, 1902, the referee made an order directing that the trustee pay to the petitioner the sum of $1298.08, the amount of said tax bill for the year 1901, together with the accrued penalties and fees provided by law.

Thereafter, on June 17, the trustee filed a petition (hereto attached) praying that the referee certify to the judge for his opinion thereon, the foregoing order, which is done accordingly.

WALTER D. COLES,
Referee in Bankruptcy."

3 "*Opinion of Referee.*

The petition of the collector in this case presents the general question whether property in the hands of a trustee in bankruptcy is subject to taxation under the statutes of this State. I have carefully considered the briefs of counsel, the relevant provisions of the statutes, and the pertinent cases, and have reached the following conclusions:

1. A trustee in bankrupt is, by virtue of the provisions of the bankrupt law, (section 70), vested with plenary title to all the property of the bankrupt, not declared to be exempt. The fact that the trustee holds such title in trust for the purposes declared in the act, does not in any way impair his title and such title is complete and effectual as against all the world. Until a dividend is declared, or a distribution ordered, no creditor of the bankrupt estate has any title attaching to the whole or to any part of the property in the possession of the trustee; and a creditor having an allowed claim, cannot properly be considered the owner of an undivided interest therein. Until a distribution is ordered, the right of a creditor is limited to securing compliance, on the part of the trustee, with the provisions of the act, regulating the administration and distribution of the estate.

2. The property of a bankrupt estate in the hands of a trustee in bankruptcy, is 'under the care, charge and management' of such trustee, within the meaning of section 9144 Revised Statutes of Missouri 1899, and it is therefore the duty of such trustee to make return of such property for purposes of taxation. The foregoing conclusion seems to follow necessarily, from the fact that the trustee has title to the property of the bankrupt estate, and is charged by law with the custody, preservation and management thereof. The mere fact that the bankrupt law imposes certain restrictions upon the trustee's right to deal with the property, and throws certain safeguards around his right to control it, does not impair or invalidate the foregoing conclusion. (State *vs.* Burr, 143 Mo. 209.)

3. While section 64*a* of the bankrupt law seems to relate solely to taxes 'due and owing by the bankrupt,' prior to bankruptcy, section 64*b* provides for the payment in full out of the bankrupt

estate of the 'actual and necessary costs of preserving the estate subsequent to filing the petition.' The latter provision is of a very comprehensive character, and was unquestionably intended to provide for the payment of all proper expenses and charges incident to the continued existence and preservation of the assets of
4 the estate. Property in the hands of a trustee in bankruptcy is embraced within the terms of the State statutes imposing taxes, and I can see nothing in the policy or purposes of the bankrupt law, which would justify the conclusion that Congress intended that such property should be held exempt from the burden of State taxation.

4. To impose upon trustees in bankruptcy the duty of making returns and of paying current taxes will certainly tend to obstruct and prolong the administration of bankrupt estates, but that fact does not justify the conclusion that such trustees are not obliged to pay taxes. Where the law clearly imposes the duty of paying taxes, the delay and inconvenience resulting from compliance with the law, is no excuse for non-compliance, and the 'argument from convenience' has no application in such a case.

5. So far as there have been any adjudications upon the question, the conclusions reached are in conformity to the foregoing views. *In re* Cornheim, 100 Fed. 268, 4 American Bankruptcy Reports, 58; *In re* Kellar, 109 Fed. 131, 6 American Bankruptcy Reports, 351.

In accordance with the foregoing views, the petition of the collector is sustained, and the trustee is ordered to pay the petitioner the sum of $1298.08, together with the accrued penalties, and the fees, provided by law."

"In the District Court of the United States for the Eastern Divison of the Eastern Judicial District of Missouri.

In the Matter of SIEGEL-HILLMAN DRY GOODS CO., Bankrupt. In Bankruptcy. No. 198.

Now comes Solomon L. Swarts, trustee herein, and petitions the referee to certify for review by the United States district court for the eastern division of the eastern judicial district of Missouri, or by the judge thereof, in accordance with the law and general orders in bankruptcy in such cases made and provided, the order of the referee entered herein on the 16th day of June, 1902, directing the trustee to pay to L. F. Hammer Jr., collector of the revenue of the city of St. Louis, Missouri, the sum of twelve hundred and ninety-eight and 8/100 dollars ($1298.08) together with the accrued penalties and the fees provided by law.

And the trustee prays the referee to certify to the court aforesaid, or to the judge thereof, the questions presented, with the evidence relating thereto.

5 And as grounds for such review of the said order the trustee alleges that the referee erred in the following respects:

First. In his decision that funds of a bankrupt estate while in process of administration by the United States district court in bank-

ruptcy are subject to taxation by the State of Missouri in the city of St. Louis.

Second. In directing and ordering the trustee to pay to the collector of the revenue for the city of St. Louis the sum of twelve hundred and ninety-eight and 8/100 dollars ($1298.08) together with the accrued penalties and the fees as provided by law.

Third. In deciding that the funds of a bankrupt estate while in process of administration by the United States district court in bankruptcy are in the custody, charge or control of the trustee in bankruptcy.

Fourth. In not holding that the funds of a bankrupt estate while in process of administration by the United States district court in bankruptcy are in the custody of the law, and are under the control and charge of the United States district court in bankruptcy having charge of the estate, and in not holding that such funds are not subject to taxation by the State.

SOLOMON L. SWARTS, *Trustee*,
By SALE & SALE, *His Attorneys.*"

Indorsed: No. 198. *In re* Siegel-Hillman Dry Goods Co., bankrupt. Question arising upon petition of L. F. Hammer, Jr., collector, certified to judge for his opinion thereon. Filed June 19, 1902. Wm. Morgan, clerk.

And afterwards, to wit, on the 25th day of June, A. D. 1902, said question was heard by and submitted to the court on the finding of said referee and the court having considered said report and being fully advised thereof:

"It is ordered that the finding of the referee ordering the trustee to pay to L. F. Hammer, collector of the city of St. Louis the sum of twelve hundred ninety-eight dollars and eight cents ($1298.08), the amount of taxes assessed against said trustee for the year A. D. 1901, be and the same is approved; and that so much of the finding of said referee, ordering the trustee to pay the accrued penalties and fee as provided by law, be and the same is hereby disapproved.

It is therefore now ordered that Solomon L. Swarts, trustee of said estate, pay to L. F. Hammer, collector of the revenue for the
6 city of St. Louis, the said sum of twelve hundred ninety-eight dollars and eight cents ($1298.08), the amount of taxes found to be due as aforesaid."

Indorsed: United States district court, eastern division of the eastern judicial district of Missouri. In bankruptcy. In the matter of Siegel-Hillman Dry Goods Company, bankrupt. Order on report of referee as special master on claim of L. F. Hammer, collector, &c. Filed 25th June, 1902. Wm. Morgan, clerk.

And afterwards, to wit, on the 27th day of June, A. D. 1902, there was filed in the office of the clerk of said district court, in said cause, a petition for appeal, which petition is in the words and figures following, to wit:

"In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In the Matter of SIEGEL-HILLMAN DRY GOODS CO., Bankrupt. In Bankruptcy. No. 198.

In re Claim of L. F. HAMMER, JR., Collector of the Revenue for the City of St. Louis.

Solomon L. Swarts, trustee of the Siegel-Hillman Dry Goods Company, bankrupt, conceiving himself aggrieved by the decree made and entered on the 25th day of June, 1902, in the above-entitled matter, does hereby appeal from said order and decree to the United States circuit court of appeals for the eighth circuit, for the reasons specified in the assignment of errors, which is filed herewith, and he prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States circuit court of appeals for said circuit.

Dated St. Louis, Missouri, June 27, 1902.

SALE & SALE,
Attorneys for Solomon L. Swarts, Trustee.

The foregoing claim of appeal is allowed.

ELMER B. ADAMS,
District Judge."

Indorsed: In dist. court U. S., E. D. of E. D. of Missouri. No. 198. *In re* Siegel-Hillman Dry Goods Co., bankrupt. *In re* claim L. F. Hammer, Jr., for taxes. Petition for appeal. Filed Jun- 27, 1902. Wm. Morgan, clerk.

7 And on the 28th day of June, A. D. 1902, there was filed in said clerk's office, an assignment of errors in said cause in the words and figures following, to wit:

"In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In the Matter of SIEGEL-HILLMAN DRY GOODS CO., Bankrupt. In Bankruptcy. No. 198.

In re Claim of L. F. HAMMER, JR., Collector of the Revenue for the City of St. Louis.

Assignment of Errors.

Now on the 27th day of June, 1902, comes the said Solomon L. Swarts, trustee in bankruptcy of Siegel-Hillman Dry Goods Company, by Sale & Sale, his attorneys, and says that the decree in said cause is erroneous and against the just rights of said trustee, for the following reasons:

First. Because the court erred in approving the decision of the referee herein that the funds of a bankrupt estate while in process of administration by the United States district court in bankruptcy are subject to taxation by the State of Missouri and the city of St. Louis.

Second. Because the court erred in directing and ordering the trustee to pay the collector of the revenue for the city of St. Louis the sum of twelve hundred and ninety-eight and $\frac{8}{100}$ dollars (1298.08).

Third. Because the court erred in its decision that the funds of a bankrupt estate while in process of administration by the United States district court are subject to taxation under the laws of the State of Missouri and the bankruptcy law of 1898.

Fourth. Because the court erred in not holding that the funds of a bankrupt estate while in process of administration by the United States district court in bankruptcy are not taxable or assessable for taxation under the laws of the State.

Fifth. Because the court erred in allowing the claim of L. F. Hammer, Jr., collector of the revenue for the city of St. Louis, for taxes for the year 1901.

Wherefore, the said Solomon L. Swarts, trustee prays that said decree may be reversed, and said court may be directed to enter a decree in accordance with the law and the facts as shown by
8 a transcript of the record, proceedings and papers upon which the decree complained of was rendered.

SALE & SALE,
Solicitors for Solomon L. Swarts, Trustee."

Endorsed: In district court of United States for E. D. of E. D. of Missouri. No. 198. *In re* Siegel-Hillman Dry Goods Co., bankrupt. *In re* claim of L. F. Hammer, Jr., for taxes. Assignment of errors. Filed Jun- 28, 1902. Wm. Morgan, clerk.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

In the District Court of the United States in and for the Eastern Division of said Judicial District.

I, William Morgan, clerk of the district court of the United States, in and for the eastern division of the eastern judicial district of Missouri, do hereby certify that the foregoing is a full, true and complete transcript of the pleadings filed and proceedings had on the petition of L. F. Hammer, Jr., collector of the revenue for the city of St. Louis, for an order on the trustee to pay a certain tax bill, together with accrued penalties commissions and fees, in the matter of Siegel-Hillman Dry Goods Company, bankrupt, No. 198 in bankruptcy, as the same remain on file and of record in my office.

I do further certify, that the original citation filed in said cause, with the acknowledgment of service endorsed thereon, is hereto attached and herewith returned.

In testimony whereof, I have hereunto set my hand and affixed the seal of said district court of the United States, in and for said division of said district, at office in the city of St. Louis, Missouri, this 21st day of July, A. D. 1902.

{ Seal of the United States District Court, Eastern Division of the Eastern Judicial District of Missouri. }

WM. MORGAN,
Clerk of the U. S. District Court, St. Louis, Mo.

Filed Aug. 12, 1902.

JOHN D. JORDAN, *Clerk.*

9 (*Appearance for Appellant.*)

And on the sixteenth day of January, A. D. 1903, an appearance of counsel for appellant was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

SOLOMON L. SWARTS, Trustee in Bankruptcy of Siegel-Hillman Dry Goods Co., Appellant,
vs.
L. F. HAMMER, JR., Collector, &c. } No. 1806.

The clerk will enter our appearance as counsel for the appellant.

M. N. SALE.
LEE SALE.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1806. Solomon L. Swarts, trustee, etc., appellant, *vs.* L. F. Hammer, Jr., collector, &c. Appearance. Filed Jan. 16, 1903. John D. Jordan, clerk. M. N. Sale, Lee Sale, counsel for appellant.

(*Appearance for Appellee.*)

And on the seventh day of October, A. D. 1902, an appearance of counsel for the appellee was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

SOLOMON L. SWARTS, Trustee, etc., Appellant,
vs.
L. F. HAMMER, JR., Collector, etc., Appellee. } No. 1806.

The clerk will enter our appearance as counsel for the appellee.

10

GEORGE S. JOHNSON.
CHARLES A. HOUTS.
HERBERT R. MARLATT.
HARRY B. HAWES.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1806. Solomon L. Swarts, trustee, &c., appellant, *vs.* L. F. Hammer, Jr., coll'r. Appearance. Filed Oct. 7, 1902. John D. Jordan, clerk. George S. Johnson, Charles A. Houts, Herbert R. Marlatt, Harry B. Hawes, counsel for appellee.

(*Order of Submission.*)

And on the twelfth day of December, A. D. 1902, in the record of the proceedings of said circuit court of appeals is an order of submission in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1902.

MONDAY, *January* 12, 1903.

SOLOMON L. SWARTS, Trustee, &c., Appellant,
vs.
L. F. HAMMER, JR., Collector, &c. } No. 1806.

Appeal from the district court of the United States for the eastern district of Missouri.

This cause having been called for hearing in its regular order, the same was argued by Mr. Lee Sale in behalf of the appellant.

Thereupon the cause was submitted to the court upon the transcript of record from said district court and the briefs of counsel for the respective parties filed herein.

Opinion.

And on the second day of February, A. D. 1903, an opinion of said circuit court of appeals was filed in said cause, in the words and figures following, to wit:

11 United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1902.

SOLOMON L. SWARTS, Trustee in Bankruptcy of Siegel-Hillman Dry Goods Company, Appellant, *vs.* L. F. HAMMER, JR., Collector, &c., Appellee.	No. 1806. Appeal from the District Court of the United States for the Eastern District of Missouri.

Mr. Lee Sale (Mr. Moses N. Sale was with him on the brief) for appellant.

Mr. Herbert R. Marlatt, Mr. George S. Johnson, Mr. Charles A. Houts, and Mr. Harry B. Hawes submitted a brief for appellee.

Before Caldwell, Sanborn, and Thayer, circuit judges.

CALDWELL, circuit judge, delivered the opinion of the court:

Solomon L. Swarts as trustee in bankruptcy of the Siegel-Hillman Dry Goods Company had in his hands as such trustee the sum of $68,320 belonging to the bankrupt estate, which sum was deposited to the credit of the trustee in the designated depository of the court. This money was so held by the trustee at the time appointed by the law of the State for the assessment of moneys and other personal property, and was duly assessed to the trustee. The trustee refused to pay the tax on this money in his hands, claiming that the bankrupt law exempted it from taxation. The referee decided it was liable to taxation and this decision was affirmed by the district court, and the trustee appealed to this court.

The money was clearly liable to be taxed under the State law and the tax is valid and collectible unless the bankrupt act exempts it from taxation.

Exemption from taxation is never presumed. The legislative intent to exempt property from taxation must be clearly and explicitly expressed.

Whether Congress could rightfully exempt from State taxation the property of a bankrupt in the hands of a trustee in bankruptcy and otherwise subject to taxation, we need not inquire. It has
12 not attempted to do so and it is highly probable it never will.

The power of taxation as well as the power to exempt from taxation is a legislative and not a judicial function. And a bankrupt court no more than any other court can exempt from taxation property in the hands of one of its officers which is liable to taxation under the State law.

It has never been questioned but what property in the custody and control of receivers and trustees of the Federal courts was subject to taxation under the State law the same as other like property. Judson on Taxation, section 407 and cases cited.

And this applies to trustees in bankruptcy as well as receivers and trustees in other cases and proceedings in the Federal courts. It is a

grave mistake to suppose that property in the possession and custody of an officer of the Federal court, by that single fact, enjoys immunity from taxation. So far from exempting property in the custody and possession of its officers from taxation a Federal court, upon proper application, will always order and direct the payment of the taxes duly assessed on such property and treat the same as a preferred claim against the estate or fund. *Judson on Taxation*, section 541.

The decree of the district court is affirmed.

Filed February 2, 1903.

13 (*Decree.*)

And on the second day of February, A. D. 1903, in the record of the proceedings of said circuit court of appeals is a decree in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1902.

MONDAY, *February* 2, 1903.

SOLOMON L. SWARTS, Trustee in Bankruptcy of Siegel-Hillman Dry Goods Company, Appellant,
vs.
L. F. HAMMER, JR., Collector, &c. } No. 1806.

Appeal from the district court of the United States for the eastern district of Missouri.

This cause came on to be heard on the transcript of the record from the district court of the United States for the eastern district of Missouri, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said district court, in this cause, be, and the same is hereby, affirmed with costs; and that L. F. Hammer, Jr., collector, &c., have and recover against Solomon L. Swarts, trustee in bankruptcy of Siegel-Hillman Dry Goods Company the sum of twenty dollars for his costs herein and have execution therefor.

February 2, 1903.

14 (*Petition for Certificate, etc.*)

And afterwards to wit: on the twenty-sixth day of February, A. D. 1903, there was filed in the clerk's office of the circuit court of appeals in said cause, the original of a petition for a certificate and the allowance of an appeal to the Supreme Court of the United States, which said petition, together with the certificate and the order allowing the appeal thereon, is in words and figures following, to wit:

Honorable David J. Brewer, associate justice of the Supreme Court of the United States:

Your petitioner, Solomon L. Swarts, respectfully represents:

That he is the trustee in bankruptcy of the Siegel-Hillman Dry Goods Company; that the Siegel-Hillman Dry Goods Company was adjudged bankrupt on February 8, 1900, and thereafter on March 8, your petitioner was elected and qualified as trustee of the bankrupt estate. On June 1, 1900, said petitioner, as such trustee, had in his hand and on deposit in the designated depository $68,320 in money belonging to the bankrupt estate. On February 24th, 1902, L. F. Hammer, Jr., as collector of the revenue, filed a petition alleging that State, school and city taxes for the year 1901 had been regularly assessed against the property in the possession of said trustee on June 1, 1900, said property being said sum of $68,320 and that a tax bill for said tax, properly certified, had been delivered to said collector for collection, and prayed for an order directing trustee to pay L. F. Hammer the sum of $1298.08, the amount of said tax bill, together with the accrued penalties, fees and commissions, as provided by the State law. Petitioner, as trustee, filed an answer denying that the taxes sought to be collected by the collector were a legal and proper charge against the trustee, or that the same ought to be paid by said trustee out of the funds of the estate in his hands. The district court ordered the trustee to pay the collector the sum of $1298.08 being the face of the tax bill, all of which facts more
15 particularly appear in the transcript of record duly certified and filed herewith.

That from the order of the district court your petitioner appealed to the circuit court of appeals for the eighth circuit and the decision of the district court was sustained by the said circuit court of appeals in an opinion delivered by Judge Caldwell which said opinion appears on pages 11 and 12 of the transcript of record filed herewith.

That the State statute under consideration provided "Every person owning or holding property on the first day of June, including all such property purchased on that day shall be liable for taxes thereon for the ensuing year."

That the brief of counsel of the appellant and the brief of the appellee are filed herewith.

That the question raised here is one likely to be raised sooner or later in every State where any person is named as trustee or where any funds are located in any designated depository and the funds of a trustee may be measurably diminished before he comes to distribute to creditors and especially is this so where the administration may be delayed for several years or where he may have to file claims in different States to recover assets due the bankrupt or where claims are disputed, and the orderly administration of a trustee may be interfered with by conflicting and debatable claims of various jurisdictions; that the bankrupt act does not in its terms give a preferred claim or any claim on assets accruing to the State, county or municipality after the adjudication in bankruptcy. The princi-

ple of *expressio unius est exclusio alterius* would seem to apply. Your petitioner only presents so much of the argument on the merits as may enable your honor to see that another circuit court of appeals construing a different State law might very well decide the question differently; that there might never be an uniform administration of the bankruptcy act until the Supreme Court of the United States finally passed upon the question.

That the section of the bankruptcy act applicable to this appeal is numbered 25 *b* 2.

16 Wherefore, your petitioner prays that your honor will certify that in your opinion the determination of the question involved in the allowance of the claim of L. F. Hammer, Jr., collector, against The Siegel-Hillman Dry Goods Company, bankrupt, is essential to a uniform construction of the bankruptcy act approved July 1st, 1898, throughout the United States and allow an appeal to the Supreme Court of the United States.

SALE & SALE,
WOLF & COHEN,
Attorneys for Petitioner.

I certify that in my opinion the determination of the questions involved in the allowance of the claim of L. F. Hammer, Jr., collector, &c., against the bankrupt estate of Siegel-Hillman Dry Goods Company is essential to a uniform construction of the bankruptcy act throughout the United States, and I hereby allow an appeal to the Supreme Court of the United States.

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

February 21, 1903.

(Endorsed:) No. 1806. Solomon L. Swarts, trustee, &c., appellant, *vs.* L. F. Hammer, Jr., coll'r, &c. Petition for certificate and allowance of appeal and order allowing appeal to Supreme Court of the United States. Filed Feb. 26, 1903. John D. Jordan, clerk.

(*Citation.*)

And on the twenty-seventh day of February, A. D. 1903, a citation was filed in the clerk's office of said circuit court of appeals in said cause, the original of which with the admission of service endorsed thereon is hereto attached and herewith returned.

17 UNITED STATES OF AMERICA, *ss:*

To L. F. Hammer, Jr., collector of the revenue of the city of St. Louis, Missouri, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the United States circuit court of appeals for the eighth circuit, wherein Solomon L. Swarts, trustee in bankruptcy

of Siegel-Hillman Dry Goods Company, is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, this 21st day of February, in the year of our Lord one thousand nine hundred and three.

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

Service of above citation is hereby admitted this 26th day of February, 1903.

HERBERT R. MARLATT,
GEORGE S. JOHNSON,
CHARLES A. HOUTS,
HARRY B. HAWES,
Attorneys for L. F. Hammer, Jr., Collector of the Revenue of the City of St. Louis, Missouri, Appellee.

[Endorsed:] No. 1806. Solomon L. Swarts, trustee, etc., appellant, *vs.* L. F. Hammer, Jr., collector, &c. Citation. Filed Feb. 27, 1903. John D. Jordan, clerk.

18 (*Clerk's Certificate.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing eighteen pages contain full, true and complete copies of all the pleadings, proceedings and record entries, including the opinion of said circuit court of appeals, in a certain cause wherein Solomon L. Swarts, trustee in bankruptcy of Siegel-Hillman Dry Goods Company, was appellant, and L. F. Hammer, Jr., collector, &c., was appellee, No. 1806, December term, 1902, as full, true and complete as the same remain on file and of record in my office.

I do further certify that the original citation with the admission of service endorsed thereon is hereto attached and herewith returned.

In testimony whereof, I hereunto subscribe my name and affix the seal of said circuit court of appeals, at office in the city of St. Louis, Missouri, in the eighth circuit, this ninth day of March, A. D. 1903.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed on cover: File No. 18,869. U. S. C. C. of appeals, 8th circuit. Term No. 641. Solomon L. Swarts, trustee in bankruptcy of Siegel-Hillman Dry Goods Company, appellant, *vs.* L. F. Hammer, Junior, collector of the revenue of the city of St. Louis, Missouri. Filed March 17, 1903.